

1984 WL 249842 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 13, 1984

*1 Mr. Roy W. Hudson
Post Office Box 144
Ridgeway, South Carolina 29130

Dear Mr. Hudson:

By your letter of February 7, 1984, to James M. Holly of this Office, you asked whether it would be dual office holding if someone held jobs as a fireman for Kershaw County and as a policeman for the Town of Ridgeway; and if someone held jobs as a guard at Central Correctional Institution and as a policeman for the Town of Ridgeway.

[Article XVII, § 1A of the South Carolina Constitution](#) provides that ‘. . . no person shall hold two offices of honor or profit at the same time.’ For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. [State v. Crenshaw](#), 274 S.C. 475, 266 S.E. 2d 61 (1980).

In the first situation you have described, the position of police officer has been determined to be an office. See [Ops. Atty. Gen.](#) dated February 10, 1984; October 20, 1982; and August 3, 1964 (copies enclosed). The position of paid fireman has generally been considered to be an office in the instances in which this Office has examined the question. See [Ops. Atty. Gen.](#) dated August 3, 1964; September 23, 1980; and March 28, 1983 (copies enclosed). However, a volunteer fireman has not been considered an officer by this Office. See [Ops. Atty. Gen.](#) dated August 8, 1979; January 8, 1980; and September 7, 1982 (copies enclosed). However, this Office has also taken the position that it is necessary to determine such facts as how the fire department was created and what the precise duties of the fireman are before a determination may be made as to the fireman holding an office. See [Ops. Atty. Gen.](#) dated October 25, 1979 and February 9, 1981 (copies enclosed). Likewise, we would need more information about the position of fireman to which you are referring before we would be able to determine if it is an office, to then determine whether a dual office holding situation exists.

As to the second situation posed by you, I again refer you to the enclosed Opinions concerning police officers holding an office for dual office holding purposes. This Office apparently has never considered, the question of whether a guard for the Central Correctional Institution would hold an office. Such employees of the Department of Corrections would probably hold an office, as would a police or other peace officer, assuming that such officer's duties included custody and control of prisoners, which would be an exercise of a portion of the sovereign powers of the State. [Section 24-1-280, Code of Laws of South Carolina \(1976\)](#), states:

Employees of the South Carolina Department of Corrections, while performing their officially assigned duties relating to the custody, control, transportation or recapture of any inmate within the jurisdiction of the Department, or any inmate of any jail, penitentiary, prison, public work, chain gang, or overnight lockup of the State or any political subdivision thereof not within the jurisdiction of the Department, shall have the status of peace officers anywhere in the State in any matter relating to the custody, control, transportation or recapture of such inmate.

*2 (Emphasis added.) It would appear probable that one person simultaneously serving as a town police officer and as a guard at the Central Correctional Institution, if he is covered by [Section 24-1-280 of the Code](#), may be violating the constitutional prohibition of dual office holding.

However, in either situation posed by you, we would need more information to know which office(s) may be improperly held. As you will note in the Opinion dated February 10, 1984, it is necessary to know when the person in question assumed which offices; in addition, we do not have enough information on the position of fireman to determine whether it is an office. The Opinion of February 10, 1984, discusses de facto and de jure officers; please refer to that Opinion for a discussion of how the law operates when an office-holder assumes a second office.

This Office is happy to provide copies of prior Opinions for your use and information. Please be advised, however, that the Attorney General is not authorized by statute to give advice to private citizens. If you should need advice, we must respectfully refer you to a private attorney.

Sincerely,

Particia D. Petway
Staff Attorney

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